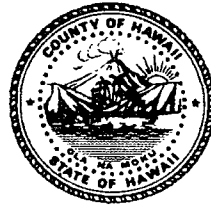


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

August 5, 2015

Valerie C. Simpson
Valerie C. Simpson, Architect & Associates
1002 Arcadian Avenue
Chico, CA 95926

Dear Ms. Simpson:

SUBJECT: Application: Variance - VAR 14-000246
Applicant: VALERIE SIMPSON, ARCHITECT
Owner: MILES MCGOWAN
Request: Variance from Chapter 25, Zoning, Article 5 Division 7
Section 25-5-76 Minimum Yards; Article 4, Division 4,
Section 25-4-44(a), Permitted Projections into Yards and
Open Space Requirements (Encroachment into the
Southwest Side Yard Setback)
Tax Map Key: 1-6-012:097; Lot 33

The Planning Director certifies the **approval** of VAR-14-000246 subject to variance conditions. The variance will allow the "as-built" carport/storage shed to remain on Lot 33; with a minimum 12.5 feet side (southwest) yard setback and associated side (southwest) yard open space. This is in lieu of the required minimum 20-foot side yard setback and 14-foot side yard open space. This variance is from the subject property's minimum side yard setback and open space requirement pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-8, Other regulations, and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space requirements..

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 3 acres and is located in the Orchidland Subdivision, situated in Kea'au, District of Puna, Hawai'i. The subject property's street address is 16-1624 39th Avenue.
2. **County Zoning.** Agricultural – 3 acre (A-3a).
3. **State Land Use Designation.** Agricultural

4. **Required Setback.** 30 feet for front and rear; 20 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 14, 2014. The variance site plan map is drawn to scale, prepared by Valerie C. Simpson, Architect, and denotes the position of the “as-built” carport/storage shed constructed into the minimum 20-foot side yard setback. The request affects the southwest side yard setback and open space.

The site plan shows that the single-family dwelling encroaches 7.5 feet into the east side yard setback and 1.5 feet into the east side yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#901966) was issued on September 13, 1991, to the subject property for a single-family dwelling consisting of 2 bedrooms, 1 bath, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated November 26, 2014. (See attached)
 - b. No comments were received from the Department of Public Works – Building.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on December 3, 2014 and December 11, 2014, respectively.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners of the general public were received.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.*

The variance application meets criteria (a) for the following reasons:

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The owner/applicant submitted the variance application to address or resolve the encroachment of the "as-built carport/storage shed into the 20-foot southwest side yard setback and into the 14-foot side yard open space as required by the Zoning Code.

The site plan prepared by Valerie C. Simpson, Architect, shows that the "as-built" carport/storage shed encroaches 7.5 feet into the southwest side yard setback and encroaches 1.5 feet into the southwest side yard open space.

The applicant has stated in part: *"My client, Miles McGowan, purchased the above property in 2011 with structures on it that had never been completed by the previous owner. Some had been permitted while others had not. As his Architect, I have helped Miles obtain a building permit to complete the work that had been started and make renovations.*

One of the as-built structures is a carport that had been built a few feet within the side yard setback."

The current owner is in the process to finalize all the open permits and unpermitted structures into compliance with the Hawai'i County Code.

Although no records could be found determining when carport/storage shed was built, it should be noted that a building permit (901967) was issued for a construction of a storage shed on September 13, 1991; however, it was never finalized.

Based on the information state above, it appears that the carport/storage shed was constructed nearly 24 years ago. Therefore, no evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the single-family dwelling encroachment problems to occur.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

(b) There are no other reasonable alternatives that would resolve the difficulty.

The variance application meets criteria (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected side yard setback and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the single-family dwelling constructed upon the subject property to fit within the correct building envelope denoted on the

recent survey map as prescribed by the Zoning Code. Any structural or design correction would leave large and unattractive reconstruction disfigurement to the single-family dwelling.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum yard setbacks.

Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The variance application meets criteria (c) for the following reasons:

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/ uses and boundary/property lines.

The variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties. This can be substantiated, to some degree, by the fact that this office did not receive any complaints from surrounding property owners during the roughly 24 years since the single-family dwelling and detached water tank were constructed.

Further, objections were not received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

Based on the foregoing findings and circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling built upon the subject property ("LOT 33") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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This variance application is approved subject to the following variance conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. No permit shall be granted to allow an ohana or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.
4. Should the carport/storage shed (footprint) on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
5. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-14-000246 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR14-000246TMK1-6-012-097McGowan.doc

xc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)

Ms. Valerie Simpson
Valerie Simpson, Architect & Associates
August 5, 2015
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NEIL ABERCROMBIE
GOVERNOR



LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: November 26, 2014

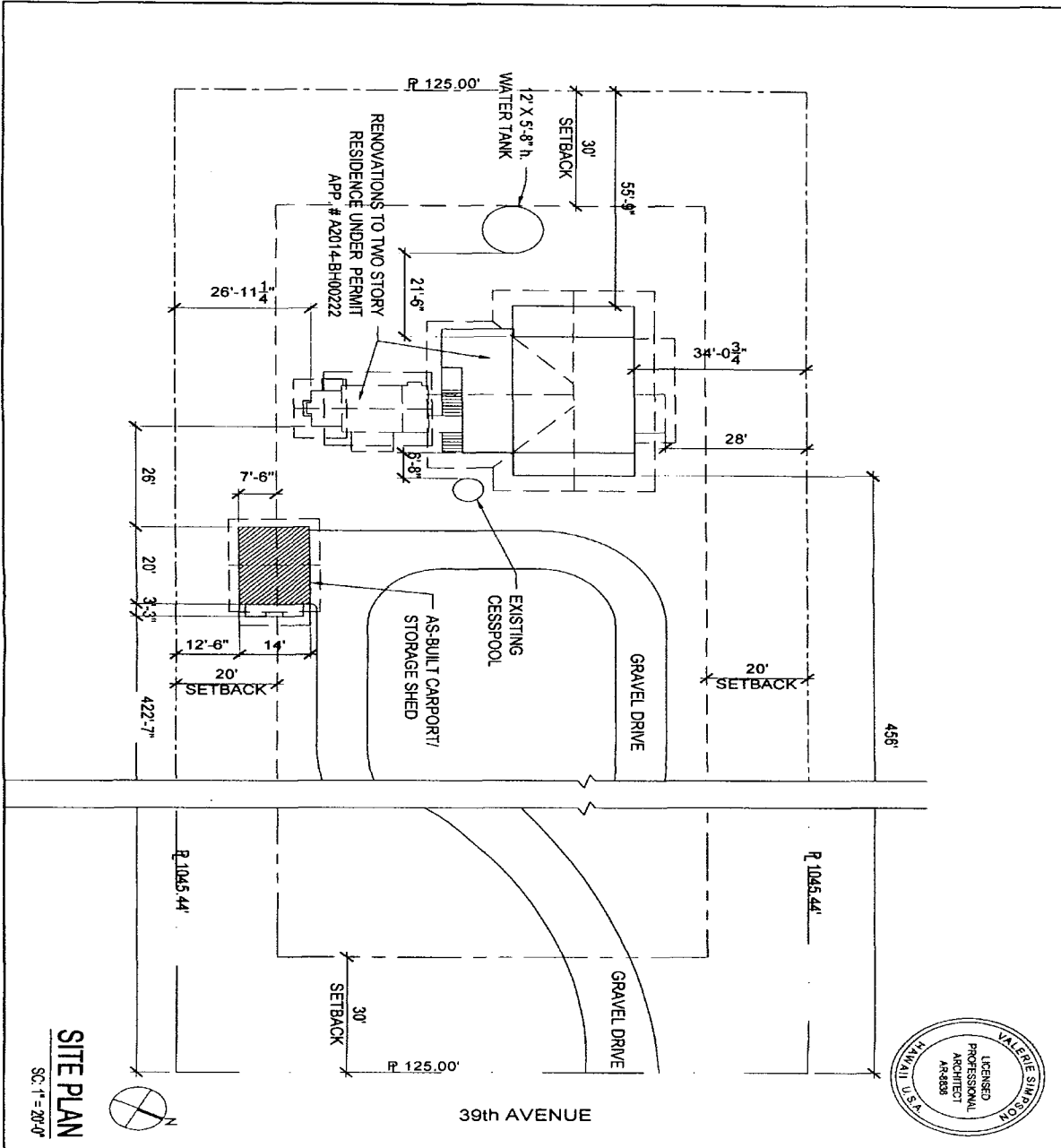
TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye *NI*
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000246
Applicant: VALERIE SIMPSON, ARCHITECT
Owner: MILES MCGOWAN
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76 Minimum Yards and Article 4, Division 4,
Section 25-4-44(a), Permitted Projections into Yards and
Open Space Requirements (Encroachment into the East
Side Yard Setback).
Tax Map Key: 1-6-012:097:Lot 33

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PLANNING DEPARTMENT
COUNTY OF HAWAII

The Health Department found no environmental health concerns with regulatory implications in the submittals.



NO.	DESCRIPTION	DATE	BY
1	PROJECT CHANGE		
2	REVISION		
3	REVISION		
4	REVISION		
5	REVISION		

McGOWAN RESIDENCE
 ORCHIDLAND ESTATES
 KEA'AU, DISTRICT OF PUNA, HAWAII
 TMK: 1-6-012-097

VALERIE C. SIMPSON, ARCHITECT ASSOCIATES
 VALERIE C. SIMPSON, LICENSED PROFESSIONAL ARCHITECT NO. 8888, STATE OF HAWAII
 1005 44th AVE, SUITE 200, KEA'AU, HI 96751
 TEL: 808-233-1234 FAX: 808-233-1235
 WWW.VSARCHITECTS.COM